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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC RICHARD MAY and SCOTT JOSEPH

Appeal 2009-014037
Application 10/567,718
Technology Center 3600

Before STEVEN D.A. MCCARTHY, STEFAN STAICOVICI and
KEN B. BARRETT, *Administrative Patent Judges*.

MCCARTHY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134 from the Examiner's final decision rejecting claims 1-14. More specifically, the Examiner rejects claims 1-14 under 35 U.S.C. § 102(b) as being anticipated by Walmsley (US 2,299,443, issued October 20, 1942). We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

Claims 1 and 8 are independent claims. Claim 1 is illustrative of the claims on appeal.

1. A wall mounting apparatus for a visual display, comprising:

a first plate attached to a wall; and

a second plate attached to a visual display, wherein the visual display is mounted to the wall by hooking the first and second plates together, such that each plate contacts the other in at least two places.

The preamble of claim 8 recites a "display system including a wall mounting apparatus." The body of claim 8 is identical to the body of claim 1.

ISSUE

Although the Appellants argue claims 1 and 8 under different headings, the arguments addressed to claim 8 are indistinguishable from the arguments addressed to claim 1. (Br. 4-5). The Appellants do not argue the patentability of dependent claims 2-7 separately from the patentability of claim 1 or the patentability of dependent claims 9-14 separately from the patentability of claim 8. (Br. 5-6).

At issue in this appeal is:

Does Walmsley describe a visual display mounted to the wall by hooking a first and second plate together, such that each plate contacts the other in at least two places? (Br. 4-6).

FINDINGS OF FACTS

The record supports the following findings of fact (“FF”) by a preponderance of the evidence.

1. We adopt and incorporate by reference lines 13 through 21 of page 3 of the Examiner’s Answer starting where the Examiner states Walmsley “teaches a wall mounting apparatus/display system” and ending “two or more end stops (6 and 15).”

ANALYSIS

The Appellants contend that “Walmsley describes a completely different arrangement that teaches away from applicants[’] arrangement, in which two members contact each other in only one place to mount a framed object on the wall.” (Br. 5 and 6).

Neither claim 1 nor claim 8 recites that each plate contacts the other exclusively in at least two places or that the two places must be spaced to any particular degree. We adopt the Examiner’s finding that “[t]he first plate and second plate contacts the other in at least two places (9, 14[;] 9[,]13).” (Ans. 4, lines 6-8; *see also* Walmsley, first column, lines 39-41, 46-49, 52-54 and fig. 3). The Appellants’ “teaching away” argument is ineffectual as the rejection is under § 102(b) and not under 35 U.S.C. § 103(a).

1 CONCLUSION

2 Walmsley describes a visual display mounted to the wall by hooking a
3 first and second plate together, such that each plate contacts the other in at
4 least two places. We sustain the rejections of claims 1-14 under § 102(b) as
5 being anticipated by Walmsley.

6
7 DECISION

8 We AFFIRM the Examiner's decision finally rejecting claims 1-14.
9 No time period for taking any subsequent action in connection with
10 this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R.
11 § 1.136(a)(1).

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13 AFFIRMED

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